

(1971) 03 KAR CK 0030
In the Karnataka High Court
Case No : Writ Petition No. 712 of 1971

H. Siddaveerappa and Others

APPELLANT

Vs

The State of Mysore and Others

RESPONDENT

Date of Decision : 12-03-1971

Acts Referred:

Constitution of India, 1950 — Article 174, 176, 212

Citation : AIR 1971 Kar 200 : (1971) 1 MysLJ 384

Hon'ble Judges : A. Narayana Pai, C.J;B. Venkataswami, J

Bench : Division Bench

Advocate : R.M. Patil, for the Appellant; S.G. Sundaraswamy, General, for the Respondent

Final Decision : Dismissed

Judgement

A. Narayana Pai, C.J.—Five members of the Legislative Assembly and one member of the Legislative Council of the Mysore Legislature pray for the issue of a writ of certiorari quashing the notices and programmes issued to the members of the Assembly and the Council intimating that the two Houses will meet on the 15th of March, 1971 and requesting them to attend the same, a writ of prohibition directing the respondents to forbear from commencing the business so intimated and a writ of mandamus directing the respondents to summon a joint session of the Legislative Assembly and Council in accordance with the provisions of Article 176 of the Constitution and to prepare programme in accordance with the rules of procedure and the conduct of business in the Mysore Legislative Assembly.

2. As the business programmed for the meeting includes consideration of the Annual Budget for the year 1971-72 and the relative appropriation bills and the contentions raised are in relation to a meeting of the Legislature called to consider such important matters, after hearing Mr. R. M. Patil for the Petitioners for some time we requested the Advocate-General who was In court watching the proceedings, to take notice on behalf of the respondents and assist us. Hence

we have heard both Mr. Patil for the petitioners and the Advocate General for the respondents.

3. The contention on behalf of the petitioners briefly is that the meeting of the Legislature called by the impugned communications or notices is the first session of the Mysore Legislature for the current year 1971, that therefore it directly attracts the provisions of Article 176 of the Constitution that the notices as well as the provisional programme issued to the members of the Legislature do not contain any indication that the provisions of the said Article would be complied with, that the proceedings of the Legislature without complying with the said Article would be totally illegal and that, "therefore, it is necessary in public interest to issue the writs as prayed for. It is further stated in the course of the arguments that there is no indication in the notices that there had been an order by the Governor under Article 174 summoning the Legislature. Mr. Patil also urged that there is no bar or prohibition against the issue of such writs by this Court either in Article 212 of the Constitution or in any other provision of the Constitution.

4. Under Article 174 of the Constitution power is conferred on the Governor to summon or prorogue either House of the Legislature and also to dissolve the Legislative Assembly. Under Article 175, the Governor may address both the houses of legislature assembled together for the purpose and also may send messages to the House or Houses of the Legislature with respect to any Bill pending in the Legislature or for any other purpose. Article 176 reads as follows:--

"176 (1) At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the Governor shall address the Legislature Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address."

The contention is that it is mandatory constitutional duty of the Governor to address the Legislature at the commencement of the first session of each year and that both according to the practice of the British Parliament and according to the observations contained in one of the judgments of the Calcutta High Court in *Syed Abdul Mansur Habibullah Vs. The Speaker, West Bengal Legislative Assembly and Others*, *Syed Abdul Mansur Habilullah v. The Speaker West Bengal Legislative Assembly*, unless the Governor in accordance with Article 176(1) addresses the Legislature at the commencement of such a session, either orally or if the circumstances so require by placing a written copy of the address on the table of the Houses, the proceedings of the Legislature at such a session would be illegal and invalid. References were made to relevant passages of

May's Parliamentary Practice and Halsbury's Laws of England, particularly to the passage therefrom cited in the judgment of the Calcutta High Court.

5. Observations in the same judgment were also relied upon for the argument that Article 212 does not impose a bar to the exercise of the jurisdiction by this court. Article 212 reads as follows:--

"212 (1) The validity of any proceedings in the Legislature or a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct or business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers."

On the language of the Article, the argument is that the first clause saves the validity of any proceeding in the Legislature from being questioned on the ground of mere irregularity of procedure and that the denial of jurisdiction of courts under Clause (2) is limited to the conduct of the persons mentioned therein within the Legislative chamber and not in respect of conduct outside the Legislature or in relation to preliminaries before the commencement of a session.

6. To the first question on merits, the Advocate-General's answer is that the meeting of the Houses of the Legislature called for the 15th of this month is not a new session at all but an adjourned meeting of the 9th Session last summoned by the Governor to meet on the 23rd of December, 1970. We have before us the Mysore Gazette Extraordinary dated 19th December, 1970, in which were published two orders of the Governor bearing the same date, one summoning the Mysore Legislative Assembly to meet and the other summoning the Legislative Council to meet at 1 p. m. and 2-15 p. m. respectively on the 23rd of December 1970. The Advocate-General has also placed before us the brief record of the proceedings of the said session which was the Ninth Session of the Fourth Assembly of the Mysore Legislative Assembly, at the end of which it is noted "the House adjourned sine die at 9-15 p. m." The adjournment was also notified by a separate notification dated 28th December, 1970. The present notices or communications are those issued by the Secretary of the Legislature which mention that the Mysore Legislative Assembly or the Council, as the case may be, which was adjourned on 26th December, 1970, will meet on the 15th of March, 1971 and request the members addressed to attend the same. The printed programme subsequently circulated also contains the heading:--

"Mysore Legislative Assembly Ninth Session (Adjourned Meetings)."

It is clear, therefore, from these papers which are not disputed that the meeting called for the 15th of this month is an adjourned meeting of the Ninth Session which was summoned under Article 174 (1) by the Governor by his order dated the 19th of December, 1970.

7. It is a well-established constitutional principle that there is a clear difference

between prorogation of the Legislature and an adjournment of a meeting of the Legislature, The power of proroguing a session of the Legislative is exclusively that of the Governor in whom rests the power to summon the same. Between the summoning of a session and its prorogation, the Legislature itself has the power to adjourn from time to time. The Advocate-General has cited a ruling of a Special Bench of the Madras High Court in *Narayanaswami v. Inspector of Police* AIR 1949 Mad 307, in para. 6 of which, the following passage from the 14th Edition of May's Parliamentary Practice is extracted:--

"A session is the period of time between the meeting of a Parliament, whether after, a prorogation or dissolution, and its prorogation. During the course of a session, either House may adjourn itself of its own motion to such date as it pleases. The period between the prorogation of Parliament and its re-assembly in a new session is termed a "recess"; while the period between the adjournment of either house and the resumption of its sitting is generally called as "adjourned".

A prorogation terminates a session; an adjournment is an interruption in the course of one and the same session." The fourth chapter of Rules of Procedure and Conduct of Business in the Mysore Legislative Assembly also gives effect to the same principle namely, that the Speaker shall determine the time when a sitting of the Assembly shall be adjourned sine die or to a day or hour or part of the same day, but a session of the Assembly is terminated by prorogation.

8. In this case from the papers produced by the Advocate-General, it becomes clear that the 9th session which was summoned by the Governor by his order dated 19th December, 1970, has not been prorogued and that the present meeting is only an adjourned meeting of the said session.

9. The only answer attempted by Mr. Patil to this argument of the Advocate-General is that the Ninth Session summoned to meet on the 23rd of December, 1970, was an emergent session intended only to discuss certain matters relating to border disputes between the States of Mysore and Maharashtra, and that when it adjourned after discussing the same, no further item of work was left on the agenda for consideration. He however concedes or does not dispute that there is nothing preventing the Legislature or a competent officer of the Legislature from adding to the agenda or modifying the agenda.

10. We therefore agree with the Advocate-General that the meeting of the 15th of March, 1971, is not a new Session at all but an adjourned meeting of the Ninth Session which commenced on the 23rd of December, 1970. It cannot therefore be regarded as a new session and therefore the first session of the year 1971 attracted the provisions of Article 176 of the Constitution,

11. This view makes it unnecessary to examine the question of jurisdiction or the scope of Article 212.

12. The writ petition is dismissed.